

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

TERRY YOUNG,

Petitioner,

-vs-

DEBORAH TIMMERMAN-COOPER,
Warden,

Respondent.

:

Case No. 3:09-cv-370

:

District Judge Walter Herbert Rice
Magistrate Judge Michael R. Merz

:

ORDER DISSOLVING STAY; REPORT AND RECOMMENDATIONS

On October 2, 2009, this Court stayed this action pending Petitioner's Motion under 28 U.S.C. § 2244 to the Sixth Circuit for Order Authorizing District Court to Consider a Second or Successive Application for Relief Under 28 U.S.C. § 2254 or § 2255 (Doc. No. 4). Petitioner filed that Motion in the Sixth Circuit and it was assigned Case No. 09-4279. On April 22, 2010, the Sixth Circuit entered an Order in that case denying relief (Docketed in S.D. Ohio Case No. 3:04-cv-275, Petitioner's prior habeas corpus case). Accordingly, the stay of these proceedings is DISSOLVED.

On September 25, 2009, the Magistrate Judge filed a Report and Recommendations recommending dismissal for lack of subject matter jurisdiction because Petitioner had not obtained the required permission from the Sixth Circuit. Since the Circuit Court has now denied permission, the Magistrate Judge concludes the Report recommends an appropriate disposition of this case. It is accordingly again recommended that the Petition herein be dismissed for lack of subject matter jurisdiction. Because reasonable jurists would

not disagree with this conclusion, Petitioner should be denied leave to appeal *in forma pauperis* and any requested certificate of appealability.

April 23, 2010.

s/ **Michael R. Merz**
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(e), this period is automatically extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(B), (C), (D), or (E) and may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6th Cir., 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).